IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

1) S.B. CIVIL WRIT PETITION NO.3167/1997.
Naresh Kumar Goyal and ors.
Vs.
State of Rajasthan and ors.
2) S.B. CIVIL WRIT PETITION NO.3281/1997.
Naresh Kumar Goyal and ors.
Vs.
State of Rajasthan and ors.
3) S.B. CIVIL WRIT PETITION NO.3681/1999.
State of Rajasthan and anr.
Vs.
Naresh Kumar Goyal and ors.
4) S.B. CIVIL WRIT PETITION NO.3677/1999.
State of Rajasthan and anr.
Vs.
Naresh Kumar Goyal and ors.
Date of Order:- 17/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Saket Pareek with
Shri A.N. Sharma for petitioners.
Shri Parag Rastogi for the respondents.
In DBCWP NOS.3167/1997 & 3281/1997.
Shri Parag Rastogi for the petitioners.
Shri Saket Pareek with
Shri A.N. Sharma for the respondents
In DBCWP NOS.3681/1999 & 3677/1999.

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Reportable

Since the dispute in these four writ petitions pertain to the same piece of land which according to the State of Rajasthan stood vested in it upon issuance of notification under Section 52(1) of the Urban Improvement Trust Act, 1959 (in short, “UIT Act”), all of them were heard together and are being decided by this common judgment.

2) The petitioners claim that they are bonafide purchasers of the land and submit that the acquisition proceedings of the subject land stood lapsed in view of Section 11A of the Land Acquisition Act, 1894 (in short, “Act of 1894”) because award was not passed within two years of the notification issued under Section 52 of the UIT Act and, therefore,

the Land Acquisition Officer by his order dated 14/6/1991 rightly declared such proceedings to have lapsed.

3) While the State Government alongwith Collector-cum-Chairman UIT Alwar has challenged the aforesaid order of the Land Acquisition Officer, the private petitioners who are respondents in writ petitions filed by the State Government have prayed for quashment of the notice issued to them by the UIT on various dates requiring them to remove unauthorised constructions raised without their permission and have further prayed for issuing a mandamus to the respondents not to demolish the aforementioned constructions and not to interfere with

their peaceful possession and enjoyment of the aforesaid land.

4) I have heard Shri Saket Pareek, learned counsel for the petitioners in DBCWP Nos.3167/1997 & DBCWP NO.3281/1997 and Shri Parag Rastogi, learned counsel for the petitioners in DBCWP NOS.3681/1999 & 3677/1999, who are both representing the respondents in writ petitions filed by each other.

5) Dispute in the present case is that a notification under Section 52(2) of the UIT Act was issued by the State Government and published in the Rajasthan Gazette dated 1/7/1976 for acquiring 15 biswa land of Khasra No.212/266 and 212/285 situated in village Nagli Kota, Tehsil and District Alwar and 13 biswa land of Khasra No.393

situated in village Daudpur, District Alwar. One Bhupendra Kumar S/o Rameshwar Nath Sain was shown as khateadar thereof. He filed an application on 3/7/1976 and sought time for filing reply before the competent officer i.e. Town Planning Department, Alwar and, thereafter, submitted his reply on 30/9/1976 raising several objections. Statement of Bhupendra Kumar was recorded on 28/4/1977. The competent officer sent his report to the State Government on 30/4/1977 recommending acquisition of the land and award of compensation. The Government then issued notification under Section 52(1) of the UIT Act for acquiring land in question which was published in the Rajasthan Gazette on 23/6/1977. A further notice was

issued to said Bhupendra Kumar on 4/7/1977 under the provisions of Section 53(3) of the UIT Act requiring him to appear before the competent authority on 4/7/1977 for settlement of compensation. Similar notices were issued on various dates such as 10/7/1977, 12/9/1977, 13/3/1978, 7/4/1978, 9/8/1977, 26/8/1977, 16/11/1978, 23/3/1979 and 27/7/1979 requiring him to appear on the date given therein for stating the terms of compensation as may be determined. Last notice under Section 52(5) of the UIT Act was issued on 6/12/1979 requiring him to deliver possession. He submitted an application on 26/3/1982 before the competent officer but thereafter he did not appear before him for settlement of compensation. Possession

of the land was taken over by the Land Acquisition Officer and UIT Alwar on 16/7/1982. The Land Acquisition Officer again on 26/8/1982 served a notice upon the petitioner for stating the terms of compensation. In the meantime, Shri Bhupendra Kumar Sain died on 26/9/1990 and his widow Smt.Sushila Sain submitted an application before the Land Acquisition Officer on 20/4/1991 for releasing the aforesaid khasra number from the acquisition. She submitted Vakalatnama before the competent officer in favour of one Advocate Chain Narain Gupta and also applied for certified copy of the documents. The Land Acquisition Officer fixed the matter to be heard at site of the land on 30/4/1991 where, only Sushila

Devi Sain and her Advocate were present. Upon inspection of the land, the Land Acquisition Officer fixed the matter on 4/5/1991. The inspection was thus carried in absence and behind the back of the representatives of the State and UIT. The matter was then adjourned to 14/6/1991 on which date the impugned acquisition was held to have lapsed in view of Section 11A of the Act of 1894.

6) The land which is subject matter of dispute in these writ petitions appears to have been sold by Smt.Sushila Devi Sain to the private respondents in the writ petition filed by the State Government who are petitioners in their own writ petitions. Their contention is that they are all bonafide purchasers of the land.

7) Shri Parag Rastogi, learned counsel for the petitioners in DBCWP NOS.3681/1999 & 3677/1999 filed by the State who also represent the respondents in DBCWP Nos.3167/1997 & 3281/1997 filed by Shri Naresh Kumar Goyal & Ors. argued that the order passed by the Land Acquisition Officer is based on total misreading and misunderstanding of the law on the subject inasmuch as, the Land Acquisition Officer has wrongly held that the possession of the land was not taken over. Possession of the land had already been taken on 16/7/1982. The respondents have illegally trespassed over the land but that shall not affect the conclusion as to the fact that possession was taken over. Number of notices were given to Bhupendra Kumar for

settlement of compensation but when he failed to respond, the matter was referred to the government. It was argued that Sections 52 and 53 of the UIT Act envisaged a special scheme in which there was no requirement of passing the award and, therefore, the limitation of passing award within two years from the date of notification issued under Section as required by Section 11A of the Act of 1894 would not be attracted in the present case and proceedings would also not lapse. Shri Parag Rastogi in support of his this contention cited judgments of the Hon'ble Supreme Court in **Pratap Vs. State of Rajasthan : AIR 1996 SC 1296, Satendra Prasad Jain Vs. State of U.P. and ors. :**

AIR 1993 SC 2517, Awadh Bihari Yadav Vs. State of Bihar and others : AIR 1996 SC 122. Shri Parag Rastogi further argued that when the possession of the land has been taken over, the proceedings of land acquisition would not lapse even if it was initiated in the normal law relating to land acquisition under the Act of 1894. In this connection, he has cited the judgment of the Hon'ble Supreme Court in **Balmokand Khatri Educational and Industrial Trust Vs. State of Punjab : AIR 1996 SC 1239.** It was argued that even if the land has been illegally transferred in favour of third party after issuance of notification by the Government, such transaction would not vest any title and would be nullity in

law. He cited the judgment of the Hon'ble Supreme Court in **AIR 1996 SC 5201** in support of the aforesaid argument. It was argued that notice was issued to the respondents on 4/7/1996 for raising unauthorised and illegal constructions. Request for permission to raise construction was not entertained because the respondents have failed to prove the title. It was argued that the petitioner came to know about the illegal order dated 14/6/1991 passed by the Land Acquisition Officer only when they received notice of SBCWP No.3281/1997. It was argued that the Land Acquisition Officer has passed the impugned-order behind the back of the petitioners inasmuch as, the order of the Land Acquisition Officer being null and

void, even if some delay has taken place in challenging the same by the State Government, that should not be allowed to defeat justice. Mr.Parag Rastogi in this connection has placed reliance on the Full Bench decision of this Court in **Chimanlal Vs. State of Rajasthan and ors. : 2000(2) W.L.C. 1** and argued that even if no period of limitation has been prescribed for exercise of revisional jurisdiction, yet such power has to be exercised by the court within a reasonable time. Though that would depend on the facts of each case, however, a view has been taken by the Court that inherent powers can be exercised at any time. He therefore prayed that the petition be allowed.

8) On the other hand, Shri Saket Pareek, learned counsel for the respondents argued that the writ petitions filed by the State Government are not maintainable because under the Act of 1894, the Collector is supposed to be the Land Acquisition Officer and in the petition filed by the State Government, Collector Alwar is also co-petitioner. Shri Saket Pareek referred to the various provisions of the Act of 1894 specially the definition of “Collector” as given in Section 3(c) and argued that Collector has been defined to mean Collector of a District and that the Land Acquisition Officer being an extended arm of the Government, the petitioners cannot be allowed to challenge their own order in

the writ petition. Shri Saket Pareek relied on the judgment of the Hon'ble Supreme Court in **Sharda Devi Vs. State of Bihar 2002(3) SCC 128** and argued that in the above referred case when the State proceeded to acquire the land on an assumption that it belongs to a particular person, the award made by the Collector cannot be called in question by the State. Reliance has also been placed on another judgment of the Supreme Court in **State of U.P. And ors. Vs. Rajiv Gupta and anr. : 1994(5) SCC 686** and argued that Section 11A of the Act of 1894 is mandatory and on expiry of two years from the date of publication of declaration, if the award is not passed, entire proceedings under

the Act would lapse. Relying on another judgment of Supreme Court in **Ahad Brothers Vs. State of M.P. : (2005) 1 SCC 545**, it was argued that the State cannot be a person interested within the meaning of Section 3(b) of the Act to agitate any claim under Section 18 or 30 of the Act. Shri Saket Pareek also argued that the writ petitions of the State have been filed with enormous delay, for the order sought to be impugned therein was passed on 14/6/1991 whereas the writ petition was filed on 10/5/1999. Even if it is a writ petition filed by the State, that does not entitle it to claim any different treatment. The writ petition suffers from delay and latches therefore, it is liable

to be dismissed on this count alone. Shri Saket Pareek in order to buttress his argument, relied on the judgment of the Hon'ble Supreme Court in **U.P. Jal Nigam Vs. Jaswant Singh and another (2006) 11 SCC 264** and Division Bench's judgment of this Court in **Mohd.Usman Vs. Union of India : AIR 1984 Raj. 156.** He also relied on the judgment of the Supreme Court in **Ramesh Dutta Vs. State of Punjab & Anr. : 2004(7) SCC 388** and argued that the Hon'ble Supreme Court in that case while considering the scope of Section 17 by virtue of which the State has taken over possession of the disputed land, which vested in it, held that if any land is

vested in the Government, yet requirement of passing award is not dispensed with.

9) On merits of the petitions filed by the respondents in the writ petitions of State, Shri Saket Pareek argued that the petitioners are bonafide purchasers and therefore they cannot be made to suffer owing to the impugned-order passed by the Government officer of the respondent-State. It was argued that having purchased the land against the proper sale consideration, the petitioners have raised various constructions and some part of which are being used for residential purposes and some for commercial. It was argued that the land having been released from acquisition, permission to raise construction cannot be withheld inasmuch

as, constructions, if any, raised without permission can be regularised by taking appropriate charges. Shri Saket Pareek, learned counsel for the petitioner referred to the Govt.Circular dated 23/4/1997 according to which constructions raised even on government land can be regularised. He argued that during pendency of the writ petition also the State Government has regularised such constructions under its policy as to regularisation of constructions on government / acquired land. In this connection, he cited the Circular of the government dated 26/5/2000 and argued that in that circular, the government has decided to regularise such construction by charging 25% amount of the residential

reserve price. It was therefore prayed that petition filed by the State Government be dismissed and those of the respondents therein be allowed.

10) I have given my earnest consideration to the rival submissions made at the bar, respectfully studied the cited case law and perused the material on record.

11) I shall first deal with the preliminary objections which Shri Saket Pareek, learned counsel for the respondents has raised about the maintainability of the writ petition filed by the State Government. He has on this aspect raised two fold arguments:-

(a) Firstly, that the State Government cannot be permitted to challenge its own order passed by the Land Acquisition Officer. The State Government has power under Section 15A to call for any record at any time of any proceedings before the award is made by the Collector for the purpose of satisfying itself as to legality or propriety or any irregularity or violation of any provision as it deems fit after providing a reasonable opportunity of hearing to the person effected thereby. The State Government having not acted under that provision within reasonable time, the writ petition cannot be entertained.

(b) Secondly, that the Collector having been authorised under the scheme of the Act to make award of acquisition, can not himself be allowed to challenge the order passed by the Land Acquisition Officer. He in this connection relied on two judgments of the Hon'ble Supreme Court namely; Sharda Devi and Ahad Brothers, supra. In Ahad Brothers, their Lordships while relying on the case of Sharda Devi held that State cannot be said to be personally interested either under Section 18 or Section 30 of the Act and that the High Court committed an error in deciding that question of title can be decided in the proceedings arising out of Section 18 of the Act. Similar view was earlier taken by the Hon'ble Supreme Court in Sharda Devi,

supra. But, their lordships in para 37 sounded the note of caution that this would not debar the State Government from pursuing such other legal remedy before such other forum as may be available to the State Government and did not express any opinion on the merits and the maintainability thereof. Question therefore would arise whether in a case like this, where a palpably illegal order has been passed by the Land Acquisition Officer, can the State Government avail the remedy of invoking writ jurisdiction of this Court in the face of provisions contained in Section 15A of the Act of 1894. That would have to be decided considering the provisions which are relevant to the case in hand now which are

Sections 52 and 53 of the UIT Act and also whether the provisions of Section 15A of the Act of 1894 can be applied thereto.

12) Learned counsel for the petitioner has strenuously canvassed the argument about non-maintainability of the writ petition but, in doing so, he has mixed up the UIT Act with the Act of 1894. The Act of 1894 need not be projected upon the proceedings which were initiated and were concluded under the provisions of the UIT Act. This issue directly fell for consideration of the Hon'ble Supreme Court in Pratap supra wherein their lordships held that where land had vested in the State Government with the publication of notification under Section 52(1) of the UIT Act, subsequent extension of the

Central Act i.e. the Land Acquisition Act, 1894 to the State of Rajasthan, by amendment the UIT Act would have no consequence because vesting of the land in the State Government free from all encumbrances with the issuance of notification u/S.52(1) of the UIT Act was completed prior thereto. Hon'ble Supreme Court in **Satendra Prasad Jain** supra held that once possession had been taken under Section 17(1) of the Act of 1894 and the land vested in the government, then the government could not withdraw from acquisition under Section 48 and provisions of Section 11A were not attracted. In view of this settled proposition of law therefore, the acquisition proceedings would not lapse on

failure of making award within two years as per Section 11A supra. Their lordships have further held that the provisions of Section 11A would not be attracted even if the award had not been passed within the stipulated period and that even if the award had not been passed, the acquisition proceedings does not come to an end. Similar view with regard to lapsing of proceedings by virtue of Section 11A of the Act has been expressed by the Supreme Court in Ahad Brothers supra that when the government has taken possession in Section 17(1), the proceedings would not lapse even if award has not been passed within the time prescribed by that Section. In the present case too, the possession of the land has been taken by the State

Government and thereafter even if award has not been passed, the proceedings could not be held to have lapsed. The provisions of Sections 52 and 53 of the UIT Act are in themselves a complete code. Inspite of the powers available to the government under Section 15A, being confined and peculiar to that Act only, if the government has decided to invoke writ jurisdiction of this Court, the petitions cannot be dismissed on that count alone because the government cannot be left remedy less.

13) Adverting now to the argument that the Land Acquisition Officer being an officer of the Government, the Collector could not be permitted to challenge his order in the writ petition. I find that

this argument is again sought to be supported by Section 15A of the Act of 1894 in that the government would call for the record of any acquisition proceedings for the purpose of satisfying itself as to the legality and propriety of any finding or any order passed or as to the regularity of such proceedings. On consideration of the various provisions of the UIT Act and the scheme thereof, it is noticed that no similar powers have been vested in the government as provided under Section 15A of the Act of 1894. Can it be said therefore that even if, an absolutely illegal order has been passed by the Land Acquisition Officer, the State Government would have no remedy because the Land Acquisition Officer is considered to be

its agent. As already noticed above, the Act of 1894 has provided for a specific remedy for a situation like this and before making of award by the Collector, the appropriate government may call for the record, for the purpose of satisfying itself as to the legality or propriety of any finding of any order passed or as to the regularity of such proceedings after providing reasonable opportunity of hearing to the person concerned. The UIT Act however is completely silent about such power of revision with the government. If the State Government, instead of itself holding the order passed by the Land Acquisition Officer illegal, has come up in writ petition against the said order to claim such declaration, it

cannot be non-suited. Throwing away of the petition on this technical plea would result in defeating cause of justice and perpetuating an illegal order which is wholly unsustainable in law. Besides, the petitioner No.2 as Collector was not the Land Acquisition Officer in this matter. He is petitioner here because he was also Chairman of the UIT Alwar at the material time.

14) Adverting now to the arguments made by Shri Saket Pareek, it should be noted that in the writ petition filed by him, the argument that has been raised is that the petitioners are bonafide purchasers and they cannot be made to suffer even if the land sold to them by Smt.Sushila Devi Sain, was subject matter of acquisition.

The petitioners have prayed for quashment of various notices issued to them by the UIT asking them to remove their unauthorised constructions raised on such land or else, such construction would be removed at their costs. They have also challenged the order dated 6/6/1997 whereby the Land Conversion Officer Alwar conveyed to Tehsildar Alwar that the disputed agriculture land cannot be converted for residential purpose because such land has been reserved for use of the Indian Railways. The petitioners therefore prayed that the respondents be restrained from demolishing the construction raised by the petitioners. Learned counsel for the petitioners in the course of arguments referred to the government circular dated

23/4/1997 regarding policy of the government to regularise constructions on acquired /government land reference of which has been mentioned in para 14 of the petition. It is stated that subsequent to the said government circular, the government vide circular dated 26/5/2000 has taken a policy decision to regularise the constructions raised on acquired/government land by charging 25% of the residential reserve price. There is however, no corresponding prayer made in either of the writ petitions seeking a relief that respondents be directed to consider the case of the petitioners for regularisation on the basis of such circulars. In fact, there is no plea in regard to the subsequent circular dated

26/5/2000. Such argument cannot be canvassed at the stage of final hearing in the absence of proper pleadings and foundation and corresponding prayer in the writ petition. The respondents cannot be suddenly expected to meet a case which was not originally set up by the petitioners and, therefore, they cannot be taken by surprise requiring them to respond to a plea which was not originally set up. In the facts of the case, no relief possibly can be granted on improperly constituted writ petitions.

15) It is trite law that agreement to sell or transfer of a land, subsequent to issuance of notification for its acquisition is not valid and does not confer any right or title on the person

who agrees to purchase such encumbered land.

In view of the discussion made above, the writ petition filed by the State of Rajasthan i.e. S.B. Civil Writ Petition Nos.3681/1999 and 3677/1999 are allowed whereas, S.B. Civil Writ Petition Nos.3167/1997 and 3281/1997 filed by Naresh Kumar Goyal and others are dismissed. The order dated 14/6/1991 (Annexure-21) is quashed and set-aside. The land in question is declared to have vested in the State in terms of Section 52 (4) of the UIT Act w.e.f. the date of issuance of notification u/S.52(1).

There shall be no order as to costs.

anil **(MOHAMMAD RAFIQ), J.**